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8 IN THE UNITED STATES DISTRICT COURT
9
EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 BRANDON BANNICK, et al,

14 Defendants.
15

CASE NO. 1:20-CR-00238-JLT

UNITED STATES' RESPONSE TO
DEFENDANT'S REQUEST FOR TRIAL
GROUPING

DATE:

TIME:

COURT: Hon. Jennifer L. Thurston

16 I. INTRODUCTION

17 The United States files this Response to defendant Brandon Bannick's request for the Court to
18 order trial groupings. ECF 1181.

19 II. STATEMENT OF FACTS

20 On May 29, 2024, a grand jury returned a detailed Third Superseding Indictment against the
21 defendants charging them with participating in a RICO conspiracy in violation of 18 U.S.C. § 1962(d),
22 and Murder in Aid of Racketeering, in violation of 18 U.S.C. § 1959. ECF 1098. The Third
23 Superseding Indictment contains a detailed description of the government's theory and evidence of the
24 Aryan Brotherhood as a criminal enterprise, including facts about its formation, membership, command
25 structure, codes of conduct, purposes, symbols, and method and means of operation. ECF 1098, at 2–5.
26 The Third Superseding Indictment also describes the specific defendants' roles and activities within the
27 enterprise. ECF 1098, at 5–9. The Third Superseding Indictment additionally contains information
28

1 regarding the murder of six individuals, and the conspiracy to murder an additional individual, as
2 charged in Counts Two through Seven. ECF 1098, at 14-18. Further, the Third Superseding Indictment
3 alleges conduct relating to the furtherance of the Aryan Brotherhood (AB) enterprise and its affairs,
4 detailed within the RICO conspiracy charged in Count One, and also charged in the subsequent counts.

5 On March 9, 2023, the Court designated this matter complex. ECF 549. On January 17, 2024,
6 the Court set this matter for a jury trial to begin on January 14, 2025. ECF 916.

7 On July 26, 2024, defendant Bannick filed the instant request, asking the Court to order trial
8 groupings, ostensibly to aid the orderly presentation of this case. The government opposes this request,
9 however, as it is essentially a motion to sever without a proper basis. The Court has denied previous
10 requests for severance in this case, as severance in a complex case of this nature, charging RICO
11 conspiracy and murder in aid of racketeering, is not appropriate. ECF 818, 1009.¹ Nothing about the
12 charges has changed sufficiently since the Court denied those severance motions to warrant a different
13 ruling on this one. Finally, with trial approximately five months away, it is premature to designate trial
14 groups in any event, as a final list of defendants taking the matter to trial is not yet known.

15 **III. ANALYSIS**

16 **A. All Defendants Should Proceed to Trial Together Because this Case Involves Legal and
17 Factual Issues Common to Each.**

18 As this court has recognized, the defendants in this case are properly joined together and should
19 be tried together. ECF 1009 at 3-4. Joint trials are the “preference in the federal system,” for defendants
20 indicted at the same time via one indictment. ECF 1009 at 3, citing *Zafiro v. United States*, 506 U.S.
21 534, 537 (1993); see also *United States v. Hernandez-Orellana*, 539 F.3d 994, 1001-02 (9th Cir. 2008)
22 (There is a “well-established … preference for joint trials where defendants have been jointly indicted”);
23 *United States v. Baker*, 10 F.3d 1374, 1386 (9th Cir. 1993). “[J]oint trials of persons charged with
24 committing the same offense expedites the administration of justice, reduces the congestion of trial
25 dockets, conserves judicial time, lessens the burdens upon citizens to sacrifice time and money to serve

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27 ¹ On October 13, 2023, the Court denied Johnson’s motion to sever, which included a denial of
28 severance requested on speedy trial grounds. On March 19, 2024, the Court denied Bash’s motion to
sever.

1 on juries and avoids the necessity of recalling witnesses who would otherwise be called upon to testify
 2 only once.” *United States v. Brady*, 579 F.2d 1121, 1128 (9th Cir. 1978).² For these reasons, joint trials
 3 remain the “rule,” absent compelling countervailing reasons. *United States v. Brashier*, 548 F.2d 1315,
 4 1324 (9th Cir. 1976) (“Joint trials are the rule rather than the exception.”) (citing *United States v. Cruz*,
 5 536 F.2d 1264, 1267 (9th Cir. 1976); *United States v. Camacho*, 528 F.2d 464, 470 (9th Cir.), cert.
 6 denied, 425 U.S. 995 (1976)).

7 Given the preference for joint trials, Federal Rule of Criminal Procedure 14 permits a district
 8 court to grant severance “only if there is a serious risk that a joint trial would compromise a specific trial
 9 right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or
 10 innocence.” *Zafiro*, 506 U.S. at 539; *see also United States v. Escalante*, 637 F.2d 1197, 1201 (9th Cir.
 11 1980) (“Rule 14 provides that, at the discretion of the trial judge, a severance may be ordered when it
 12 appears that a defendant may be significantly prejudiced by a joint trial with his codefendants”).

13 “The burden is on the defendant to show ‘clear,’ ‘manifest,’ or ‘undue’ prejudice from a joint
 14 trial.” *United States v. Mikhel*, 889 F.3d 1003, 1046 (9th Cir. 2018) (quoting *United States v. Polizzi*,
 15 801 F.2d 1543, 1553-54 (9th Cir. 1986)). “Rules 8(b) and 14 are designed to promote economy and
 16 efficiency and to avoid a multiplicity of trials.” *Id.* (citation omitted). As such, defendants carry a
 17 “heavy burden” to show that a joint trial is “so manifestly prejudicial that it outweigh[s] the dominant
 18 concern with judicial economy.” *United States v. Moreno*, 618 F. App’x. 308, 310 (9th Cir. 2015).

19 In denying defendant Bash’s motion for severance, the Court rightly reasoned that prejudice is
 20 not established by some difference in the evidence amongst defendants, because there is “overlap”
 21 between the government’s proof of the AB enterprise and various acts done in furtherance of that
 22 enterprise. ECF 1009 at 4. Indeed, all the conduct charged in the Third Superseding Indictment is
 23 alleged to have been conducted in furtherance of AB activity, and thus constituted the same series of

24 ² This presumes that the charging document properly joins defendants under Federal Rule of
 25 Criminal Procedure 8. That is the case here: the requirements of Rule 8(b) are satisfied in a RICO
 26 conspiracy indictment when each defendant participated in the affairs of the same enterprise through the
 27 commission of the alleged predicate racketeering acts that related to the same enterprise, even when the
 28 defendants are charged with different racketeering acts. *See United States v. Irizarry*, 341 F.3d 273,
 287-90 (2d Cir. 2003). Rule 8(b) is construed liberally in favor of joinder. *United States v. Baker*, 10
 F.3d 1374, 1387 (9th Cir. 1993).

1 acts or transactions. *See Felix-Gutierrez*, 940 F.2d at 1208 (noting that the term “transaction” is
 2 interpreted flexibly, and whether a “series” exists depends on whether there is a “logical relationship”
 3 between the transactions). Here, the RICO conspiracy is related to the other counts charged, and thus
 4 are part of the “same series of acts and transactions,” making joinder proper. Accordingly, a single
 5 presentation of this overlapping evidence promotes efficiency.

6 **B. A Single Joint Presentation of Evidence Promotes Judicial Efficiency**

7 As the Ninth Circuit and this Court have concluded, efficiency concerns counsel a single joint
 8 trial in conspiracy cases. In *United States v. Fernandez*, 388 F.3d 1199, 1242 (9th Cir. 1994), modified,
 9 425 F.3d 1248 (9th Cir. 2005), the Court noted that “a joint trial is particularly appropriate where the co-
 10 defendants are charged with conspiracy, because the concern for judicial efficiency is less likely to be
 11 outweighed by possible prejudice to the defendants when much of the same evidence would be
 12 admissible against each of them in separate trials.” (Citations omitted); ECF 1009 at 4 (quoting
 13 *Fernandez*). The substantial public interest in joint trials is that a joint trial expedites “the administration
 14 of justice, reduces the congestion of trial dockets, conserves judicial time, lessens the burden upon
 15 citizens who must sacrifice both time and money to serve upon juries, and avoids the necessity of
 16 recalling witnesses who would otherwise be called upon to testify only once.” *Parker v. United States*,
 17 404 F.2d 1193, 1196 (9th Cir. 1968), cert. denied, 394 U.S. 1004, 89 S.Ct. 1602 (1968), rehearing
 18 denied, 395 U.S. 941, 89 S.Ct. 1602 (1969).

19 The Supreme Court has emphasized the concern that the government should not be unnecessarily
 20 put to the burden of presenting the same evidence and testimony twice either in the same trial (*McCree*,
 21 476 U.S. at 181) or in separate trials (*Buchanan*, 483 U.S. at 418-19). *See Zafiro v. United States*, 506
 22 U.S. 534, 113 S.Ct. 933 (1993) (and authorities cited therein) (antagonistic or “mutually exclusive”
 23 defenses do not require severance as a matter of law; joint trials play a vital role in the criminal justice
 24 system by promoting efficiency and serving the ends of justice).

25 Moreover, “[t]here is no support in caselaw or in logic for the proposition that a lengthy trial, a
 26 large number and variety of charges, and numerous defendants violate due process without a showing
 27 that the issues were actually beyond the jury’s competence.” *Fernandez*, 388 F.3d at 1243.
 28

1 In this case, a joint trial of Bannick and his co-defendants is appropriate because they are charged
 2 with a RICO conspiracy involving gang-related activity, crimes committed on behalf of and in
 3 furtherance of the enterprise, and crimes committed within the structure and rules of the enterprise. The
 4 very nature of evidence necessary to prove a RICO enterprise includes evidence of criminal activities
 5 engaged in by other members and associates of the Aryan Brotherhood. The Court should therefore deny
 6 Bannick's request for grouping and continue forward with a joint trial for all defendants.

7 **C. Grouping Would Not Promote Efficiency**

8 Severing defendants into separate "grouped" trials at this stage would create inefficiency,
 9 expense, and could create danger to witnesses. Courts have discretion to sever multi-defendant trials
 10 into smaller grouped trials based on efficiency concerns, a process one court termed "Severance for
 11 Judicial Economy." *United States v. Bundy*, No. 216CR00046PALGMN, 2016 WL 7227882, at *13 (D.
 12 Nev. Dec. 13, 2016); *see also United States v. Mancuso*, 130 F.R.D. 128, 134 (D. Nev. 1990). Like any
 13 other type of severance, however, "grouping" must be supported by compelling circumstances to
 14 overcome the preference for joint trials. *See United States v. Dodd*, No. CR-13-6016-EFS-01, 2013 WL
 15 5316182, at *1 (E.D. Wash. Sept. 19, 2013) (denying joint motion by government and defense to sever
 16 trial into three "allegedly factually distinct[] groupings"). No such compelling circumstance exists in
 17 this case at this time.

18 Bannick argues that the logistics of an 11-defendant trial would be challenging, and speculates
 19 that trial would be extended because any witness could face up to 11 cross-examinations. ECF 1181
 20 at 8. But even if the trial were to involve all 11 defendants, Bannick's proffered reasons are insufficient.
 21 After all, each of those defendants would presumably have the right to cross-examine each witness,
 22 whether as part of a joint trial or in one of the multiple grouped trials. The difference is that, in the latter
 23 case, the government will have had to call the witness back to court multiple times for direct
 24 examination.

25 Additionally, trial groupings would result in two or more separate trials where the same evidence
 26 demonstrating the Aryan Brotherhood's membership, command structure, codes of conduct, purposes,
 27 and pattern of racketeering activity would have to be introduced to multiple different juries. Given this,
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1 significant resources would be expended because of multiple, duplicative trials, while at the same time
2 creating the potential for a heightened risk to witness safety if some defendants are tried before others.

3 Indeed, Bannick's request for grouping highlights another significant risk in doing so. Bannick
4 notes that a trial of three Aryan Brotherhood members in the Sacramento Division of this Court required
5 37 court days, spread over more than two calendar months. ECF 1181 at 3. Should this case be severed
6 and grouped, it is unlikely that each group would require substantially less trial time. This case does not
7 present a circumstance in which some small trials could last an appreciably shorter amount of time than
8 others; trying the case in multiple groups runs the risk of consuming court time for the better part of a
9 year. Though a larger trial might very well last somewhat longer than the previous trial in the
10 Sacramento Division, it is not clear that any efficiency would be gained with multiple grouped trials.

11 Indeed, the nature of this trial weighs in favor of a single joint trial. The case is complex,
12 involves voluminous discovery, and the government's reliance on the same evidence to prove the RICO
13 conspiracy allegations in Count One, as well as the murder allegations in Counts Two through Seven.
14 Witness safety concerns arise if witnesses are required to testify twice. The case here involves one count
15 of RICO Conspiracy, six counts of murder in aid of racketeering, occurring on four different instances,
16 and the conspiracy to murder in aid of racketeering. Given the structure of the AB, defendants charged
17 in the Third Superseding Indictment are both AB members charged with giving orders to murder, and
18 the AB associates who carried out those orders. These acts, along with other acts by defendants, and
19 defendants themselves are interwoven within the larger proof of the AB enterprise. Thus, the
20 government is opposed to trial groupings and the Court should deny the request by Bannick and other
21 defendants to sever and group the defendants in this case.

22 Should the Court be inclined to consider grouping the defendants at trial, the government is
23 prepared to discuss the most efficient and sensible way to do so. As it is the government's evidence that
24 will drive much of the trial, the government is best positioned to understand which defendants logically
25 group with others, given the charges alleged and the evidence required to prove them. The parties will
26 not be able to realize those efficiencies most completely, however, until trial is closer and the Court has
27 more clarity about which defendants will remain.

28

1 **D. Defendant Weaver's Motion to Continue**

2 Additionally, the government acknowledges that defendant Weaver has filed a motion for
3 continuance of the trial date due to the appointment of new counsel. The government believes that
4 severing Weaver's case from those of the other AB members, at the very least but also as to the AB
5 associates charged in this case, is not appropriate in this matter for the reasons set forth both above and
6 within the government's opposition to the two defense severance motions filed previously and denied by
7 this Court³. The government is aware that to represent defendant Weaver effectively, newly appointed
8 counsel will need time to prepare. The government has been in communication with Weaver's new
9 counsel and will continue to provide the assistance requested to facilitate counsel's preparation.

10 Given that, and the anticipation of the production of a large volume of discovery related to proof
11 of the AB enterprise, the government is not opposed to a short continuance of the trial. It is the
12 government's position that it would benefit all counsel on this matter to have additional time to review
13 and prepare. Additionally, defendants continue to file motions for discovery, to which the government is
14 responding. In the meantime, the government has been actively working with outside agencies to
15 acquire any items that exist and are obtainable related to those discovery demands.⁴

16 **A. CONCLUSION**

17 There is a strong preference for joint trials in the federal system and the defendant has presented
18 no compelling reason to deviate from that norm at this time. A joint trial in this matter remains
19 appropriate. If the Court determines at some point to grant the defense request, the government is
20 prepared to advise the Court of the trial groupings that would create the most efficient and logical
21 presentation(s) of the case.

22 ³ Additionally, any Speedy Trial concerns have been addressed by the Court in previous orders.
23 The Speedy Trial Act excludes a "reasonable period of delay" for joint trials and when the ends of
24 justice so require. 18 U.S.C. § 3161(h)(6), (h)(7). Section 3161(h)(7) excludes "a reasonable period of
25 delay when the defendant is joined for trial with a co-defendant as to whom the time for trial has not run
26 and no motion for severance has been granted." Under this provision, "an exclusion [from the speedy
trial clock] for one defendant applies to all co-defendants." *United States v. Butz*, 982 F.2d 1378, 1381
(9th Cir.1993).

27 ⁴ The government does not concede that all the defendants' discovery requests are warranted. To
28 the extent there is a legal basis for any given request, however, and the government assesses there is not
a risk to the safety or integrity of the case arising from the request, the government will provide all
available materials requested that are within its discovery obligations.

The government does not oppose the motion to continue trial as, in either situation, newly-appointed counsel for Weaver will need additional time to prepare for this extensive trial. Weaver is intertwined with the other charged defendants in such a way that severance would not be appropriate, as it was not appropriate for the other defendants for whom the Court denied it.

Dated: August 20, 2024

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